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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

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**2005 Senate Bill 202**

**Senate Substitute  
Amendment 1**

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### **Current Law**

#### ***Smoking in Restaurants***

Under current law, no person may smoke in a restaurant with a seating capacity of more than 50 persons. "Restaurant" is defined as any building, room, or place where meals are prepared or served or sold to transients or the general public, and all places used in connection with it. Soft drinks, ice cream, milk, milk drinks, ices, and confections are not "meals" under the definition of "restaurant." In addition, "restaurant" does not include a tavern that serves free lunches consisting of popcorn, cheese, crackers, pretzels, cold sausage, cured fish, or bread and butter.

The smoking prohibition in restaurants does not apply to a restaurant holding a "Class B" intoxicating liquor license or Class "B" fermented malt beverages license if the sale of intoxicating liquors or fermented malt beverages or both accounts for more than 50% of the restaurant's receipts. In addition, the smoking prohibition does not apply to entire rooms or halls used for private functions, if the arrangements for the function are under the control of the sponsor of the function.

A person in charge of a restaurant or his or her agent may designate smoking areas in a restaurant unless a fire marshal, law, ordinance, or resolution prohibits smoking.

#### ***Smoking in Retail Establishments; Taverns and Bowling Centers Excluded***

Smoking is also prohibited in retail establishments under current law. The definition of "retail establishment" is any store or shop in which retail sales is the principal business conducted, *except*: (a) a tavern operating under a "Class B" intoxicating liquor license or Class "B" fermented malt beverages license; and (b) bowling centers. Therefore, smoking is *not* prohibited in taverns that do not meet the definition of "restaurant," nor is smoking prohibited in bowling centers.

### ***Local Ordinances Regulating Smoking***

Under current law, a county, city, village, or town may enact ordinances that protect the health and comfort of the public if they comply with the purpose of state laws regulating smoking.

#### **2005 Senate Bill 202**

##### ***Smoking in Restaurants***

This bill applies the general prohibition against smoking in restaurants to any restaurant, regardless of the restaurant's capacity.

However, the bill creates a new exception to this general prohibition, which provides that the prohibition against smoking in restaurants does not apply to the bar area of a restaurant, if the sale of food in the bar area of a restaurant is only incidental to the sale of alcohol beverages.

In addition, the bill provides that a person in charge of a restaurant may not designate an area of a restaurant as a smoking area unless smoking is otherwise allowed in that restaurant.

##### ***Smoking in Bowling Centers***

This bill prohibits smoking in bowling centers, unless the bowling center meets certain conditions, as follows:

- It must not be primarily devoted to the sale of alcohol.
- It must prohibit smoking on each bowling lane when the bowling center is holding youth league play.
- It must have an adequate ventilation system.
- It must establish periods of time when smoking is prohibited.
- It must provide the same service to nonsmoking customers in a smoke-free area that it provides to smoking customers.

##### ***Local Ordinance Regulating Smoking***

This bill specifies that a local government may not enact or enforce an ordinance or adopt or enforce a resolution regulating smoking unless the ordinance or resolution strictly conforms with state law.

## **Senate Substitute Amendment 1**

### ***Smoking in Restaurants***

Unlike the bill, the substitute amendment does not modify the definition of “restaurant.” Therefore, under the substitute amendment, smoking is not regulated in a restaurant with a seating capacity of 50 or fewer persons.

However, the substitute amendment repeals current law’s exception to the prohibition against smoking in a restaurant holding a “Class B” intoxicating liquor license or Class “B” fermented malt beverages license if the sale of intoxicating liquors or fermented malt beverages or both accounts for more than 50% of the restaurant’s receipts. Therefore, these restaurants are ***not*** exempt from smoking regulations under the substitute amendment.

The substitute amendment provides, as does the bill, that the prohibition against smoking in a restaurant does not apply to the bar area of a restaurant where alcohol beverages are sold for consumption on the premises if the bar area includes a counter with seating for customers and food is served in that area only incidental to the serving of alcohol beverages. In addition, however, the substitute amendment provides that this prohibition ***does not*** to apply to a separate room in a restaurant if the room has an independent ventilation system that is entirely separate from the rest of the restaurant.

Under the substitute amendment, a person in charge or his or her agent may ***not*** designate an area of a restaurant as a smoking area unless the area meets one of the exceptions to the smoking regulation, as described above (i.e., a room or hall being used for a private function, a room with an independent ventilation system, or the bar area of a restaurant).

### ***Smoking in Bowling Centers***

The substitute amendment contains the same provisions as the bill with regard to regulating smoking in bowling centers. In addition, the substitute amendment provides that a bowling center may: (1) designate an area, including an entire room, of the bowling center as a smoking area if the bowling center posts notice of the designation of a smoking area in or near the area designated; or (2) allow smoking in the entire bowling center, or an entire room of the bowling center, for a limited period of time during which the room or bowling center is being used exclusively for a private function.

### ***Local Ordinances Regulating Smoking***

The substitute amendment contains the same provisions as the bill with regard to local ordinances regulating smoking.

## **Legislative History**

Senate Bill 202 was introduced on May 10, 2005 and referred to the Senate Committee on Job Creation, Economic Development and Consumer Affairs, which held a public hearing on the bill on June 22, 2005. The committee took executive action on the bill on June 24, 2005, and adopted Senate Substitute Amendment 1 by a vote of Ayes, 5; and Noes, 0; and recommended passage of the bill, as amended, on the same date, by a vote of Ayes, 3; and Noes, 2.

LR:ksm